

Message Text

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ACTION DLOS-03

INFO OCT-01 SS-14 ISO-00 EA-13 NSC-07 NSCE-00 COA-01 L-02

IO-03 PM-03 EB-03 SCI-01 PRS-01 CIAE-00 INR-10

NSAE-00 RSC-01 CG-00 DOTE-00 OMB-01 FEA-01 DRC-01

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R 070753Z JUN 74

FM AMEMBASSY MANILA

TO SECSTATE WASHDC 4133

AMEMBASSY CANBERRA

INFO AMEMBASSY JAKARTA

AMEMBASSY SUVA

AMEMBASSY WELLINGTON

CINCPAC

USMISSION USUN

DOD

OJCS

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LIMDIS

USUN FOR AMB STEVENSON

CINCPAC FOR POLAD

DOD FOR STUART FRENCH

OJCS FOR ADM MORRIS

TO MCINTYRE (D/LOS) FROM MOORE

E.O. 11652: GDS

TAGS: PBOR, RP

SUBJECT: LOS: ARCHIPELAGO CONSULTATIONS

1. DURING CALL BY AUSTRALIAN EMBOFF MCKEOWN WASHINGTON
EARLY MAY, DEPTOFFS AGREED TO KEEP GOA INFORMED OF PROGRESS
OF ARCHIPELAGO NEGOTIATIONS AND TO GIVE REACTIONS TO GOA

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COMMENTS ON ARCHIPELAGO ISSUE. THERE FOLLOWS INSTRUCTIONS

TO AMEMBASSY CANBERRA ON FULFILLING THIS COMMITMENT AND SPECIFIC COMMENTS ON TEXT OF NEW PAPER CONTAINING REVISED US PROPOSAL ON ARCHIPELAGOS WHICH WE HAVE JUST GIVEN TO THE PHILIPPINES, INDONESIA, AND FIJI. EMBASSY SHOULD MAKE POINTS PARAS 2 AND 3 BELOW, GIVE US WRITTEN COMMENTS (PARA 5) BELOW AND TEXT OF REVISED DRAFT US PROPOSAL (SEPTTEL) TO GOA.

2. U.S. APPRECIATES AUSTRALIAN FORBEARANCE DURING DELICATE NEGOTIATIONS WITH INDONESIA AND PHILIPPINES AND AUSTRALIAN COMMENTS ON U.S. PROPOSAL. DISCUSSIONS CONTINUE IN DELICATE STAGE AND U.S. CONTINUES TO BE ENCOURAGED AT REAL POSSIBILITY OF REACHING EARLY ACCOMMODATIONS. U.S. AGAIN HELD TALKS ON ARCHIPELAGO ISSUES ON MAY 31 -JUNE 1 IN WASHINGTON WITH HIGH-LEVEL INDONESIAN TEAM AND IN MANILA ON JUNE 5-6 WITH HIGH-LEVEL PHILIPPINE TEAM. NEGOTIATIONS CONTINUING AND WE WILL CONTINUE TO APPRECIATE CLOSE COORDINATIONS WITH AUSTRALIAN GOVT AT THIS SENSITIVE TIME.

3. U.S. IS PROVIDING AUSTRALIAN GOVT WITH RESPONSE TO AUSTRALIAN DRAFT PROPOSAL AND AUSTRALIAN COMMENTS ON U.S. PROPOSAL AND COPY OF REVISED U.S. PROPOSAL WHICH SEEKS TO TAKE INTO ACCOUNT AUSTRALIAN CONCERNS AND OTHER RESPONSES DURING CONSULTATIONS. WE HAVE PROVIDED REVISED U.S. PROPOSAL TO GOVTS OF INDONESIA, PHILIPPINES, AND FIJI AS NEGOTIATIONS CONTINUE. WE WOULD APPRECIATE AUSTRALIAN COMMENTS ON REVISED U.S. PROPOSAL AT EARLIEST POSSIBLE TIME, PARTICULARLY AS TO WHETHER NEW PROPOSAL MEETS CONCERNS PREVIOUSLY EXPRESSED BY AUSTRALIANS.

4. ON QUESTION OF PAPUA NEW GUINEA (PNG), MAPS ILLUSTRATING EFFECTS OF US 80-MILE CRITERION GIVEN MCKEOWN BYP HODGSON. (COPY BEING POUCHED EMBASSY CANBERRA). MCKEOWN SENT MAPS AND ACCOMPANYING PAPER TO CANBERRA. PAPER NOTED THREE ARCHIPELAGIC LINES IN EXCESS OF 80 NAUTICAL MILES WOULD BE REQUIRED TO ENCLOSE BISMARK ARCHIPELAGO WITHIN PNG SYSTEM. AS A CONSEQUENCE OF THEIR EXCLUSINO, AN INDEPENDENT PNG WOULD NOT SATISFY CRITERIA IN EARLIEST US PROPOSAL. MODIFICATIONS OF US PROPOSAL, (IN REFERRED PROPOSAL) HOWEVER, PERMITS ARCHIPELAGIC

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STATE TO QUALIFY AS SUCH DESPITE EXCLUSION OF ISLAND OR ISLANDS. (FIJI IS AN EXAMPLE). IN ADDITION, OTHER MODIFICATION IN US PROPOSAL WOULD PERMIT LIMITED NUMBER ARCHIPELAGIC LINES (ONE PERCENT OF TOTAL NUMBER OF ARCHIPELAGIC LINES) LONGER THAN 80 NAUTICAL MILES BUT LESS THAN 100 NAUTICAL MILES TO BE DRAWN. DEPENDING ON ULTIMATE NUMBER OF ARCHIPELAGIC LINES IN PNG SYSTEM, PNG SYSTEM, THE EXCEPTION COULD BENEFIT PNG OON BISMARK

ARCHIPELAGO INCLUSION. U.S.ALSO CONSIDERING, AT SUGGESTION OF INDONESIA, LIMITING ARCHIPELAGO STATES BY FURTHER CRITERIA REQUIRING AREA WITHIN LINES TO CONTAIN MORE WATER THAN LAND AS WELL AS PREVIOUS 1:5 LAND WATER RATIO. WE WOULD APPRECIATE AUSTRALIAN VIEWS THIS CRITERIA AND EFFECT ON PAPUA NEW GUINEA.

5. FOLLOWING ARE COMMENTS ON PROPOSED PRINCIPLES RELATING TO PASSAGE THROUGH ARCHIPELAGOS WHICH WERE GIVEN TO DEPT. BY MCKEOWN OF AUSTRALIAN EMBASSY IN EARLY MAY. REQUEST EMBASSY PASS THESE COMMENTS IN WRITING TO GOA. COMMENTS ARE KEYED TO NUMBERING USED BY AUSTRALIA IN ITS PAPER.

A) IN ORDER TO BE ACCEPTABLE TO US, RIGHT OF ARCHIPELAGIC TRANSIT MUST INCLUDE RIGHT TO TRANSIT ARCHIPELAGIC SEALANES (SEE BELOW) IN THE NORMAL MODE, I. E. SUBMERGED VESSELS SUBMERGED, SURFACE VESSELS ON SURFACE AND AIR-CRAFT IN THE AIR (OVER ARCHIPELAGIC SEALANES). ALSO, SINCE THERE WOULD BE A TERRITORIAL SEA ESTABLISHED AROUND OUTER PERIMETER OF ARCHIPELAGO, ARCHIPELAGO TRANSIT RIGHT MUST EXTEND FROM HIGH SEAS TO HIGH SEAS, I.E. THROUGH BOTH THE TERRITORIAL SEA AND ARCHIPELAGO WATERS. B),C), &D) WE CAN ACCEPT THAT ARCHIPELAGIC SEA LANES SHOULD BE DESIGNATED BY THE ARCHIPELAGO STATE BUT THEY MUST BE SET UP IN ACCORDANCE WITH INTERNATIONALLY AGREED CRITERIA PROVIDED FOR IN THE LOS TREATY AND SUBJECT TO GENERAL LOS COMPULSORY DISPUTE SETTLEMENT PROCEDURES. APPLICABLE CRITERIA MUST PROVIDE THAT THE ARCHIPELAGIC SEALANES SHOULD INCLUDE ALL NORMAL ROUTES AND WITHIN SUCH ROUTES ALL NORMAL CHANNELS AND THAT THE SIZE OF THE SEALANES BE SPECIFIED, I.E. THE LESSER OF 80 PERCENT OF THE AREA BETWEEN MAIN ISLANDS OR 100

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NAUTICAL MILES. THE INCLUSION OF SUCH CRITERIA IN THE TREATY WILL ENSURE THAT MEANINGFUL LANES ARE DESIGNATED, PROVIDE SECURITY OF EXPECTATION FOR USER NATIONS, AND ENSURE THAT THE LANES WILL BE OF SUFFICIENT SIZE TO ACHIEVE VITAL US SECURITY OBJECTIVES. THESE CRITERIA WILL, HOWEVER, ALSO ALLOW FLEXIBILITY TO ARCHIPELAGO STATES IN DESIGNATING THE PRECISE LOCATION OF SOME SEA LANES TO TAKE CARE OF PROBLEMS SUCH AS INTERNAL SECURITY.

E) THE US IS WILLING TO ACCEPT A FLAG STATE OBLIGATION FOR VESSELS TO COMPLY WITH INTERNATIONALLY-ESTABLISHED SAFETY AND NAVIGATION REGULATIONS INCLUDING TRAFFIC

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ACTION DLOS-03

INFO OCT-01 SS-14 ISO-00 EA-13 NSC-07 NSCE-00 PM-03 COA-01

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 4134

AMEMBASSY CANBERRA

INFO AMEMBASSY JAKARTA

AMEMBASSY SUVA

AMEMBASSY WELLINGTON

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SEPARATION SCHEMES BUT ARCHIPELAGO STATE SHOULD NOT HAVE THE RIGHT TO UNILATERALLY ESTABLISH SUCH REGULATIONS SINCE THAT COULD SERIOUSLY RESTRICT RIGHT OF TRANSIT THROUGH AND OVER ARCHIPELAGIC SEALANES.

F) SOVEREIGNTY OF ARCHIPELAGIC STATE WOULD EXTEND TO ALL USES WITHIN ARCHIPELAGIC WATERS EXCEPT TRANSIT OF VESSELS OR AIRCRAFT THROUGH THE ARCHIPELAGO IN DESIGNATED ARCHIPELAGIC SEALANES. THE ARCHIPELAGO STATE WOULD NOT HAVE RIGHT TO ESTABLISH OR ADMINISTER REGULATIONS AFFECTING TRANSIT IN ARCHIPELAGIC SEALANES. US WILLINGNESS TO AGREE TO SYSTEM AS OUTLINED IN US PROPOSAL IS CONDITIONED ON ACCEPTANCE OF A SYSTEM THAT DOES NOT GIVE ARCHIPELAGO STATE AUTHORITY TO REGULATE NAVIGATION. ONLY FLEXIBILITY WOULD BE IN ESTABLISHMENT
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OF SEALANES IN ACCORDANCE WITH ABOVE CRITERIA. WITH RESPECT TO SEPARATE QUESTIONS LISTED UNDER THIS SECTION, US IS WILLING TO ACCEPT A FLAG STATE OBLIGATION FOR VESSELS TO COMPLY WITH APPLICABLE INTERNATIONALLY-ESTABLISHED SAFETY AND POLLUTION CONTROL REGULATIONS. US WOULD ALSO ACCEPT FLAG STATE OBLIGATIONS FOR VESSELS NOT TO ENGAGE IN ACTION CONTRARY TO UN CHARTER AND TO TRANSIT WITHOUT UNREASONABLE DELAY THROUGH ARCHIPELAGIC WATERS. SEE REVISED US PROPOSAL FOR SPECIFICS OF US POSITION ON THESE POINTS. MARINE SCIENTIFIC RESEARCH WOULD NOT FALL WITHIN THE DEFINITION OF TRANSIT AND WOULD THUS BE UNDER CONTROL OF ARCHIPELAGO STATE WITHIN ARCHIPELAGIC LINES AND ADJACENT TERRITORIAL SEA.

G) UNDER US PROPOSAL, ARCHIPELAGO STATE HAS SOVEREIGNTY OVER ARCHIPELAGIC WATERS WITH EXCEPTION OF TRANSIT WITHIN ARCHIPELAGIC SEALANES. CONSEQUENTLY, US WILLING TO ACCEPT NOTIFICATION REQUIREMENT FOR VESSELS TO GO INTO ARCHIPELAGIC WATERS OUTSIDE ARCHIPELAGIC SEALANES PROVIDED PROVISIONS MADE FOR PROTECTION OF NORMAL SHIPPING OUTSIDE ARCHIPELAGIC SEALANES.

H) 1. AS NOTED ABOVE, US PROPOSALS WOULD REQUIRE VESSELS AND AIRCRAFT TO PROCEED THROUGH ARCHIPELAGIC SEALANES WITHOUT UNREASONABLE DELAY.

2. US PROPOSAL WOULD REQUIRE THAT VESSELS NOT USE OR THREATEN FORCE AGAINST ARCHIPELAGIC STATES IN CONTRAVENTION OF UN CHARTER. WHILE WE AGREE WITH AUSTRALIAN OBJECTIVE THIS POINT, WE PREFER OUR FORMULATION SINCE IT IS AN EXISTING STANDARD TO WHICH REFERENCE CAN BE MADE.

3. THIS REQUIREMENT IS UNACCEPTABLE AS STATED ABOVE SINCE WE CANNOT PROVIDE AUTHORITY TO ARCHIPELAGO STATE TO REGULATE NAVIGATION THROUGH ARCHIPELAGIC SEALANES.

I) ALL VESSELS MUST BE SUBJECT TO SAME REGIME INCLUDING THE SAME TRANSIT RIGHTS AND OBLIGATIONS. US VITAL SECURITY AND OTHER OBJECTIVES REQUIRE THAT DIFFERENT TYPES OF VESSELS NOT BE SUBJECT TO DISCRIMINATION. US FEELS THAT US PROPOSAL PROVIDES ADEQUATE REGIME TO PROTECT ARCHIPELAGO STATE SECURITY INTERESTS AND THAT SPECIAL
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REQUIREMENTS FOR CERTAIN VESSELS NOT NECESSARY, JUSTIFIED, OR ACCEPTABLE.

J) US STRONGLY SUPPORTS THE ESTABLISHMENT OF INTER-

NATIONAL TRIBUNAL TO DEAL WITH DISPUTES ARISING FROM
ENTIRE LOS TREATY AND WOULD THUS SUPPORT SUCH A TRIBUNAL
FOR DISPUTES ARISING FROM ARCHIPELAGO CHAPTER PROVIDED
TREATY CONTAINS USUAL PROVISIONS EXCLUDING DISPUTES
INVOLVING VESSELS ENTITLED TO SOVEREIGN IMMUNITY.

K) AS NOTED ABOVE, LAWS AND REGULATIONS OF ARCHIPELAGO
STATE WOULD NOT BE APPLICABLE TO VESSELS IN TRANSIT IN
ARCHIPELAGIC SEALANES. WHILE COMPULSORY DISPUTE SETTLE
MENT SHOULD BE APPLICABLE TO DISPUTES INVOLVING VESSELS
NOT ENTITLED TO SOVEREIGN IMMUNITY, QUESTION OF PENALTIES
IS A BROADER ISSUE TO BE ADDRESSED IN THE CONTEXT OF
THE GENERAL JURISDICTION OF THE TRIBUNAL UNDER THE
ENTIRE LOS TREATY.
SULLIVAN

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